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DAVID VICTOR LEWIS, an individual, and
YORK CLEANERS, INC. a dissolved corporation

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

ESTATE OF VIOLA B. SPAULDING;)	Case No.: C 08-00672 CRB
FLORENCE SPAULDING, trustee; LYNN)	
SPAULDING, doing business as Spaulding)	CROSS CLAIM OF YORK
Enterprises; and TINA SPAULDING)	CLEANERS INC. AND DAVID
WARD, doing business as Spaulding)	VICTOR LEWIS AGAINST
Enterprises, THE CONSERVATORSHIP)	MARTIN FRANCHISES, INC.,
OF EILEEN SPAULDING,)	COOPER INDUSTRIES, SETH R.
)	DOLE AND RUTH DOLE

Plaintiffs,

v.

YORK CLEANERS, INC., a dissolved
California Corporation; ESTATE OF
BARNARD LEWIS, DECEASED; DAVID
VICTOR LEWIS, an individual; MARTIN
FRANCHISES, INC., an Ohio corporation;
SETH R. DOLE, an individual; and RUTH
DOLE, an individual and DOES 1 through
100,

Defendants.

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YORK CLEANERS, INC., a dissolved
California Corporation and DAVID VICTOR
LEWIS, an individual;

Cross-Claimants,

v.

MARTIN FRANCHISES, INC., COOPER
INDUSTRIES, SETH R. DOLE, an
individual and RUTH DOLE, an individual
and ROES 1 through 100;

Cross-Defendants.

Pursuant to Rule 13(a) of the Federal Rules of Civil Procedure, Cross-claimants York Cleaners, Inc. (“York”) and DAVID VICTOR LEWIS, hereby assert their cross-claim for relief against MARTIN FRANCHISES, INC., an Ohio Corporation, COOPER INDUSTRIES, an Ohio Corporation, SETH R. DOLE, an individual, RUTH DOLE, an individual and ROES 1 through 100 as follows [hereinafter jointly referred to as “cross-defendants”].

PARTIES

1. Cross-Claimant York is a dissolved California corporation that operated a dry cleaning business at 31 Miller Ave., Mill Valley, California [“the property”] from approximately 1977 until the cross-claimant dissolved in 1987.
2. Martin Franchises, at all times relevant hereto, was an Ohio corporation registered to do business in the state of California.
3. Martin Franchises, at all times relevant hereto, was in the business of designing, manufacturing, constructing, assembling, inspecting, and selling various types of dry-cleaning machinery, including those sold to, and used by, York.
4. Cooper Industries, at all times relevant hereto, was an Ohio corporation registered to do business in the state of California.
5. Cooper Industries, at all times relevant hereto, was in the business of designing, manufacturing, constructing, assembling, inspecting, and selling various types of

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dry-cleaning machinery, including those sold to and used by York.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this action under CERCLA, 42 U.S.C. §9601 et seq., RCRA, 42 U.S.C. § 6972(a), the Federal Declaratory Judgment Act, 28 U.S.C. §2201 and 28 U.S.C. §1331. This Court also has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. §1367(a) as those claims are so related to the claims that fall within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.
7. Venue is proper in this Court pursuant to section 133(b) of CERCLA and because a substantial part of the events and omissions giving rise to the claims occurred in this district and the property that is the subject of the action is situated in this district. 28 U.S.C. §1391(b).

GENERAL ALLEGATIONS

8. For allegation purposes only, and without admitting any of the allegations, cross-claimants herein incorporate paragraphs 22 through 29 of the complaint filed in this case number C-08-00672, as though set forth in full herein, but again, without making any admissions to the allegations thereto.
9. The dry-cleaning machines cross-defendants designed, manufactured, constructed, assembled, inspected and sold to York caused and allowed the release of PEC into the soil, ground water and general area in and surrounding the property.

FIRST CAUSE OF ACTION

(Indemnity – Against All Cross-Defendants)

10. Cross-claimants refer to and reallege the above paragraphs and incorporates them herein by reference.
11. A determination of the proportionate degree of liability, if any, of cross-claimants, on the one hand, and cross-defendants, on the other, is necessary to protect the rights of cross-claimants.

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12. An actual controversy has arisen and now exists relating to the legal rights and duties of cross-claimants and cross-defendants, and each of them, for which cross-claimants desire a declaration of their rights and indemnification, in which cross-claimants contend the following:
 - A. That as between these parties, the responsibility, if any, for the damages claimed by plaintiffs rests entirely on cross-defendants;
 - B. That as a result, cross-defendants are obligated to partially or fully indemnify cross-claimants for sums that cross-claimants may be held to pay as a result of any damages, judgments, settlement or other awards recovered against cross-claimants by the Court, Federal or State government, or private party as a result of the alleged toxic chemical contamination of the property, and/or nearby or adjacent properties, including but not limited to, surface and subsurface soil and water; and
 - C. Cross-claimants are informed and believe that cross-defendants deny any such liability.
13. Cross-claimants are entitled to, and hereby request, a judicial determination of cross-claimants' rights, indemnification and contribution, any declaration that cross-defendants and/or others, and not cross-claimants, is/are liable for all of the costs incurred, and to be incurred in order to remove, clean up or remediate the alleged hazardous substance contamination of the soil and groundwater in and around the property.

SECOND CAUSE OF ACTION
(Contribution –
Against All Cross-Defendants)

14. Cross-claimant refers to and realleges the above paragraphs and incorporates them herein by reference.
15. In the event liability should be established on the part of cross-claimant, which liability is expressly denied, cross-claimant is informed and believes, and thereon alleges, that it may be obligated to pay sums representing a percentage of liability

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not cross-claimants' own, but rather that of cross-defendants. Therefore, cross-claimants request an adjudication and determination with respect to degrees of liability, if any, on their part and on the part of cross-defendants, so as to determine that portions of the amount, if any, by which cross-claimants are found liable, which actually represents a portion of liability of all of the cross-defendants.

THIRD CAUSE OF ACTION
(Negligence – General
Against All Cross-Defendants)

16. Cross-claimants refer to and reallege the above paragraphs and incorporate them herein.
17. By virtue of the facts and circumstances of the contamination allegedly in and around the property, the doctrine of *res ipsa loquitur* is applicable to this claim against each of the cross-defendants. Under such doctrine, the burden of proving that cross-defendants' sales, manufacture and maintenance of dry-cleaning machines was free from all negligence in connection with the alleged release of PCE at the property is placed on cross-defendants and the burden of proving freedom from liability in connection with any alleged contamination is also placed on cross-defendants.
18. In the event any or both of the cross-defendants fail to sustain their respective burdens, they are legally responsible for the damages asserted herein. Under the circumstances, the alleged contamination of the soil, surface water, and groundwater beneath and around the property would not have happened but for negligence on the part of cross-defendants, their agents, servants and employees, due to the manner in which they conducted the sales, manufacture and maintenance of their respective dry-cleaning machines.
19. In the alternative to the allegation that the doctrine of *res ipsa loquitur* is applicable against cross-defendants, it is argued that the alleged contamination and resulting property damage and response costs were due to the negligence of cross-defendants, and each of them, in their sales, manufacture and maintenance of dry-cleaning

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machinery and that each of the cross-defendants is guilty of negligence proximately causing the contamination.

20. Cross-defendants, while selling, manufacturing and maintaining the dry-cleaning machinery in the Property owed a duty to York to provide the company with dry-cleaning machines that used, stored, maintained, monitored and removed PCE in a safe and careful manner.
21. York is informed and believes and thereon alleged that cross-defendants failed to promptly and diligently to contain and clean up any alleged contamination caused by their machine's release of PCE upon the property.
22. York is informed and believes and thereon alleges that the releases of PCE would not have occurred absent some form of negligence by cross-defendants, and each of them; that the release of contaminants was caused by something within the exclusive control of one or more of the cross-defendants; and that such release was not due to any voluntary action or contribution on the part of York.
23. As a direct and proximate result of the acts, omissions and conduct of cross-defendants York has suffered, and continues to suffer, damages as alleged herein. The above-described acts, omissions and conduct of cross-defendants, including the negligence and trespass committed by cross-defendants are, and have been, without the consent or knowledge, and against the will and in violation of, the rights of York.

FOURTH CAUSE OF ACTION
(Negligence – Products Liability
Against Both Cross-Defendants)

24. Cross-claimants refer to and reallege the above paragraphs and incorporate them herein.
25. In 1977, York purchased from cross-defendants, and cross-defendants installed in the Property dry cleaning machinery that had previously been designed, manufactured, constructed, assembled, inspected, and sold by cross-defendants.
26. From 1977 through its dissolution in 1989, York continued to operate and run the dry cleaning machinery, during which time it malfunctioned causing the alleged PEC

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contamination.

27. At all times mentioned in this cross-claim, cross-defendants so negligently and carelessly designed, manufactured, constructed, assembled, inspected, and sold the dry-cleaning machinery that it was dangerous and unsafe for its intended uses.

28. At all times mentioned in this cross-claim, cross-defendants so negligently and carelessly maintained and installed the dry-cleaning equipment that it was dangerous and unsafe for its intended uses.

29. As a direct and proximate result of the negligence and carelessness of cross-defendants as described above the property has allegedly been contaminated with PEC.

30. As a further direct and proximate result of the negligence and carelessness of cross-defendants as described above, York sustained serious injuries and damage and has been, or will be, forced to incur substantial expenses in response costs and attorneys fees and costs.

FIFTH CAUSE OF ACTION
(Negligence *Per Se* –
Against All Cross-Defendants)

31. Cross-claimants refer to and reallege the above paragraphs and incorporate them herein.

32. York alleges that cross-defendants, and each of them, negligently and wrongfully caused Hazardous Substances and Hazardous Waste to be Disposed and discharged in the soil and in or on the waters of the State of California in a manner that threatens to create or has created a condition of pollution or nuisance. The Release of Hazardous Substances, and the practice of allowing their continuing migration by cross-defendants is negligence per se and breaches the cross-defendants' legal duties under State and Federal Law including : **1)** CERCLA, specifically including CERCLA §107(a)(1-4)(B), 42 U.S.C. §9607(a)(1-4)(b); **2)** RCRA §3008(a), 42 U.S.C. §6928(a); **3)** California Health and Safety Code, section 25363; **4)** California Health and Safety Code, section 25249.5, and **5)** California Water Code section

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13304(C).

33. CERCLA §107(a)(1-4)(B), 42 U.S.C. §9607(a)(1-4(b); RCRA §3008(a), 42 U.S.C. §6928(a); California Health and Safety Code, Sections 25363 and 25249.5, and California Water Code section 13304(C) impose certain duties on responsible parties for Releases of Hazardous Substances and Hazardous Wastes.
34. The Releases of Hazardous Substances and/or Wastes caused or contributed to by cross-defendants have created a condition that injures or endangers the health and interfered or interferes with the public's and Yorks' comfortable enjoyment of life or property, or both. Cross-defendants' breach of duty has or will in the future cause York to incur costs associated with the investigation, monitoring, removal or remediation of the alleged contamination of the Property.
35. York did not dispose or discharge Hazardous Substances or Hazardous Wastes, or both, and did not cause a condition of pollution or nuisance pre-existing at the Property. York is not responsible for any such condition of pollution or nuisance and are therefore entitled to indemnification and contribution from cross-defendants, and each of them, for the costs and expenditures York has incurred or will incur in connection with investigation, monitoring, removal and/or remediation of the alleged contamination in the waters of the State of California and any administrative and/or civil penalties imposed on York.
36. The resulting damages and harm alleged herein above is the specific harm and damage from which Counter-Claimant may seek contribution or indemnity pursuant to CERCLA §107(a)(1-4)(B), 42 U.S.C. §9607(a)(1-4(b); RCRA §3008(a), 42 U.S.C. §6928(a); California Health and Safety Code, section 25363; California Health and Safety Code, section 25249.5, and California Water Code section 13304(C).
37. York belongs to the class of persons that the are designed to afford protection and relief because members of the class have beneficial rights in the Environment, for clean air and drinking water.

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38. As a direct, proximate, and actual result of the wrongful acts and/or omissions of cross-defendants, and each of them, York has and will continue to suffer general, consequential and compensatory damages in amounts that are not yet fully ascertained. These damages include, but are not limited to the following:

(A) Damages due to contamination of the soil and groundwater on the property; and

(B) Any and all amounts York has incurred or will incur for the investigation, assessment, monitoring, removal and remediation of the contamination. These amounts are in excess of the minimum jurisdictional amounts of this Court and will be established according to proof at the time of trial.

SIXTH CAUSE OF ACTION
(Negligent Failure to Warn
Against All Cross-Defendants)

39. Cross-claimants refer to and reallege the above paragraphs and incorporate them herein.

40. Cross-defendants knew, or should have reasonably known, that the dry-cleaning machines sold to cross-claimants would release PEC, or were likely to release PEC, into the property, or areas surrounding or adjacent to the property, when used in a reasonably foreseeable manner.

41. Cross-defendants knew, or should have reasonably know, that cross-claimant would not realize or anticipate the likely release of PEC into the property or areas surrounding or adjacent to the property when the dry-cleaning machines were used in a reasonably foreseeable manner.

42. Cross-defendants failed to adequately warn of the danger that the dry-cleaning machines would likely release PEC into the property or areas surrounding or adjacent to the property when used in a reasonably foreseeable manner.

43. Under the same or similar circumstances a reasonable designer, manufacturer, seller, installer, builder or maintainer of dry-cleaning machines would have warned of the possible release of PEC and/or would have instructed regarding the safe use of the

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dry-cleaning machines in order to avoid, or mitigate against, the release of PEC into the property or areas surrounding or adjacent to the property.

44. Cross-defendant's failure to so warn and/or instruct cross-claimants was a substantial factor in causing harm to cross-claimants.

SEVENTH CAUSE OF ACTION
(Strict Products Liability
Against All Cross-Defendants)

45. Cross-claimants refer to and reallege the above paragraphs and incorporate them herein.

46. Cross-defendants designed, manufactured, sold, assembled, installed and maintained the dry cleaning equipment and accordingly, cross-defendants owed a duty to cross-claimants that the system was designed and maintained in such a way that made the system safe for its intended purpose.

47. At all times mentioned in this cross-claim the dry-cleaning machinery and its component parts were defective as to design, manufacture, and warnings, causing the machinery and its component parts to be in an unreasonably dangerous and defective condition that made the dry-cleaning machines unsafe for their intended use.

48. Cross-defendants knew or should have known when building and maintaining this dry cleaning system that it was designed defectively or maintained, creating a unreasonable risk of release of PEC.

49. The dry-cleaning equipment received from cross-defendants remained unchanged and in the same condition at the time of the alleged release of PEC and any injury hereafter alleged.

50. As a direct and proximate result of the defective and dangerous condition of the dry-cleaning machinery described above the property was contaminated with PEC.

51. As a further direct and proximate result of the defective and dangerous condition of the dry-cleaning described above, York sustained serious injuries and damages and has been, or will be, forced to incur substantial expenses in response costs and

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1 attorneys fees and costs.

2 WHEREFORE, with regard to this cross-claim, cross-claimants pray for entry of judgement
3 as follows:

- 4 1. For entry of judgment in favor of cross-claimants against cross-defendants for
5 indemnification, thus entitling cross-claimants to full defense and indemnification,
6 including all compensatory damages, attorneys fees, taxable costs, and for such other
7 and further relief as this Court may deem proper.
- 8 2. For entry of judgment on the second cause of action by cross-claimants against cross-
9 defendants, and for a declaration within that cause of action that cross-claimants are
10 entitled to contribution between cross-claimants and cross-defendants, for pre-
11 judgement and post-judgments interest, damages, attorney's fees, taxable costs, and for
12 such other and further relief as this Court may deem just and proper.

13 **DEMAND FOR JURY TRIAL**

14 Cross-claimants hereby demand a trial by jury of any and all claims and issues
15 triable of right by a jury.

16 Dated: May 2, 2008

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